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Abstract: Over the last decade or so, elaborate theoretical and empirical analyses of 'varieties of capitalism' have been developed, mainly to contrast Anglo-American models with those in East Asia and - especially - Europe. Corporate governance, broadly defined as relations among a range of stakeholders in firms, provides a useful focal point in testing and refining these analyses, especially in relation to Japan and the issue of convergence or divergence on Anglo-American models. Parts II-IV of this paper apply principal-agent theory to identify problems arising from incomplete information and possible opportunism among managers, shareholders, creditors and employees. It finds considerable realignment of manager and shareholder interests, even more change to Japan's main bank system of corporate governance, and less obvious - but significant - transformations in employment relations. Although differences are therefore apparent in these three major components of corporate governance, the degree of convergence towards more arm's length control mechanisms characteristic of Anglo-American models is more pronounced than expected by some theorists of 'varieties of capitalism'. However, Part V suggests that more cooperative relations may continue to prevail at the level of industrial production in Japan, premised on expansive information-sharing and participation, in turn suggesting that more than opportunism is at work. The Japanese state may also be moving in this direction, implying a more positive assessment of seemingly indecisive policy-making over the last decade. This could further set the stage for new forms of corporate governance to emerge, similarly characterised by forthright information-sharing among new stakeholder participants. Key issues are therefore whether Japan as a whole is moving towards more openness in information flows and participation by various socio-economic groups, and whether this is driven purely by concerns about opportunism or by other normative considerations. These issues are common to the US and Britain as well, suggesting a deeper level of convergence in Japan. But how they are resolved could well play out quite differently,

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leaving important divergences. In this conclusion, and generally by suggesting some possible tensions as well as coherence among important dimensions of contemporary capitalist systems, this paper therefore questions some other tenets of 'varieties of capitalism' theories developed so far.

* * *

> "The numbers coming out of Tokyo do not lie. Unemployment and bankruptcies are at their post-1940s peak. GNP shrank in 1998, and the poor third-quarter numbers for 1999 suggest that the high growth rates recorded in the first half of the year were indeed, as many had feared, simply the one-off products of huge dollops of public spending rather than signals of any fundamental turnaround. Repeated attempts to jumpstart the Japanese economy with such spending have saddled the country with a government deficit which, as a percentage of GNP, is among the highest in the OECD. The Tokyo Stock Exchange languished for a decade in the grip of one of the most vicious and protracted bear markets of the century; even the recovery that set in early in 1999 is simply taking it back to levels that a few years ago would have been regarded as disastrously low. Real estate prices have fallen to more than 60 per cent from their late 1980s peak, with no floor in sight; most of the nation's banks would be insolvent if Japan followed Western accounting standards. And to top it off, we have seen over the past year spikes in both interest rates and the yen. While interest rates have come back down, the forces that led to the spikes are still there: if higher interest rates return or the yen does not soon weaken, a range of Japanese manufacturers that have been kept alive since the mid-nineties on the life support of a weak currency and extremely low interest rates will not survive.
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> Yet the sense remains that, irrespective of whatever political difficulties may stand in the way of getting the country moving again, Japan's policy elite doesn't really think things are that bad. ...
>
> Taken together, Tokyo's policy moves paint a portrait of befuddlement, uncertainty, and serious internal rifts. Banking crises are the financial equivalent of fires: one expects alarm, panic, firemen rushing to the scene; what one doesn't expect are groups of obviously capable firemen standing around debating whether there really is or isn't a fire; if there is, should we be using water to put it out, or might we run out of water, so maybe it would be better to try one of those new chemical extinguishers – except that the bill for that would be too high? In the meantime, a whole field of bystanders jumps up and down shouting, 'Put out the bloody fire before it burns our houses too!'. So the firemen feel they must look busy but don't really do much."
>
> [Murphy 2000: 27-28, 30]

I. Revisiting 'Varieties of Capitalism': Corporate Governance as Stakeholder Contracts

Poor economic performance in the United States over the 1980s led to intriguing attempts to reconceptualise the essential elements of successful capitalism through comparative analysis. Some theorists examined economic achievements and structures in Japan and East Asia, but considerable collaborative research focused more on developments in Europe. One influential strand in the latter research argued that markets were only one institutional mechanism for coordinating economic activity, and that all these mechanisms were shaped by and shapers of "social systems of production (SSPs)", meaning:

> The way that the following institutions or structures of a region or structures of a country or a region are integrated into a social configuration: the industrial relations system; the system of training of workers and managers; the internal structure of corporate firms; the structured relationships among firms in the same industry on the one hand, and on the other firms' relationships with their suppliers and customers; the financial markets of a society; the

> conceptions of fairness and justice held by capital and labor; the structure of the state and its policies; and a society's idiosyncratic customs and traditions as well as its norms, moral principles, rules, and recipes for action.
>
> [Hollingsworth & Boyer 1997: 3]

It was argued that "all these institutions, organizations, and social values tend to cohere with each other, although they vary in the degree to which they are tightly coupled with each other into a fully fledged system". Accordingly, this new theoretical paradigm tended to stress the likely limits to change in national SSPs. There was particular skepticism about convergence on Anglo-American (especially US) systems centred on markets for standardised goods as primary coordinating mechanisms. Initial restatements acknowledged the limits of this paradigm to explain why such "configurations occur within a particular place and time" [idem], but were more ambitious in contending that no particular new configuration would emerge even amidst globalisation.

A key argument was that there was "no single method whereby ... SSPs can always be competitive", because no single system could be "always superior in all its components with respect to any alternative system" [Boyer & Hollingsworth 1997: 455]. Instead, the superiority of a SSP was seen to be "shaped not only by its institutional arrangements but also by that of its competitors, as well as the macroeconomic context in which it was embedded" [ibid: 456]. While agreeing that the "Fordist" SSP (based on standardised mass production) was being displaced, individual researchers in this project differed as to more important likely successors: "customised production" (eg fashion apparel), "diversified quality mass production" (eg automobiles), "flexible diversified quality mass production" (eg consumer electronics), or "adaptive production" (successful where technical change is fastest, eg pharmaceuticals or software) [ibid: 457, Figure 14-5]. Different sectors face variable technological and other constraints influencing adoption of SSPs, but it was argued more generally that "the general context within which a [SSP] is located influences the degree of the competitiveness of each SSP, in such a manner that the superiority of any [SSP] is context dependent" [ibid: 458]. Each SSP thus required a "variable mix of markets, networks, associations and hierarchies" [ibid: 459 (Table 14-1)] These coordinating mechanisms were thought not to be easily transplantable, because the social processes resulting in SSPs were quite historically specific [ibid: 461]. This research therefore concluded that ready globalisation was undermined not only by empirical phenomena such as persistent divergence in interest rates world-wide, enduring production niches, and technology diffusion reliant on "learning by doing", but also by more theoretical considerations:

> The coexistence of different [SSPs] is more likely than their convergence. Obviously it is quite logical for actors to provide different solutions to problems when they face different training systems, industrial relations systems, interest rates, real wages, public infrastructures, and tax and credit systems. But even if all these systems were the same, different norms, rules and value systems would still lead actors to provide different solutions to identical issues. For example, the training of workers is organized quite differently in Germany, Japan and Sweden, but nevertheless these three economies benefit from a good skills portfolio. Differences in historical traditions lead to variability in norms and rules that produce different solutions to the same problems
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> [ibid: 463; cf also eg Jackson 1999 = forthcoming].

The expansive scope of inquiry may have predisposed this theory to stress differences and divergence [cf generally Nottage 2001b], but this was arguably underpinned by some significant empirical observations.

Subsequent research along these lines developed even more ambitious frameworks of analysis to distinguish Anglo-American systems, while attempting to incorporate further empirical data. An influential reformulation proposed by Kitschelt et al [1999: 429] adapts David Soskice's distinction between "liberal market economies" (LMEs) and "coordinated market economies" (CMEs), turning on whether businesses coordinate their interactions primarily with spot-market contracts, as opposed to "mechanisms of generalized exchange or resource pooling and hierarchical coordination among firms and business associations" allowing employers to produce collective goods. They acknowledge that considerable differentiation exists among CMEs, but are most concerned with those European economies primarily coordinated at the national level (notably in Scandinavia) versus the sectoral or industry level ("Rhine" capitalist countries such as Germany or Belgium). Both sub-groups differ from "the Anglo-Saxon world of competitive market capitalism where employers are rarely able to produce collective goods through horizontal or vertical coordination", a distinction seemingly more important than "mixed cases" such as France and Italy, lying "between LMEs and industry-coordinated CMEs".[1]

Kitschelt et al [idem] also follow Soskice in acknowledging a further possible sub-group of CME, "coordination among groups of companies across industries in Japan and Korea (group coordinated market economies)", but pay only limited attention to them in their subsequent analysis. Yet Japan re-appears in passing when they try to correlate types of capitalism with "political organization": Japan has a "residual welfare state", like "uncoordinated LMEs", but one which is - paradoxically - also "paternalistic" [ibid: 434, Figure 15.1]. Japan also figures in a category of its own, unexplored, when Kitschelt et al [ibid: 435, Table 15.2] attempt to support these further qualitative parameters with a range of measures determining the welfare state and social inequality associated with each form of capitalism. On these indicators, Japan might be located overall between the LMEs and sectoral CMEs - and certainly in a world apart from the national CMEs - but it makes the taxonomy itself begins to appear rather problematic.

This difficulty also surfaces when Japan is added to the three main categories, viewed in terms of unemployment and growth rates since the 1960s [ibid: 436, Table 15.3]. Nonetheless, the figures for Japan reveal a parallel decline in economic performance since the 1970s, implying that it is being subjected to the major transformations categorizing the other types of capitalist economy as analysed by Kitschelt et al. They find unfounded the neo-liberal argument of convergence towards minimal political control in allocating resources (or non-market coordination). Instead, (1) nationally coordinated CMEs have moved quite decisively in that direction since the 1980s, but still retain significantly more political control than most sectorally coordinated CMEs; (2) the latter have not moved significantly in that direction, and indeed may exhibit now more variety in solutions along this overall parameter; (3) so do now LMEs, despite notable decreases overall in political control over economic allocation of resources [ibid: 444, Figure 15.2]. Reincorporating Japan into this picture as a hybrid, with elements from the latter two categories, implies skepticism about the possibility that it may be moving rapidly towards a LME model as predicted by neo-liberal economic theory. This accords with the earlier express analysis of Japanese

1 Rhodes and Apeldoorn [1998: 408-411] highlight key differences between "Germanic" and "Latin" economies, which they characterize as "network-oriented" in terms of institutional context and corporate features (arguably corresponding to CMEs), in distinction to "market-oriented Anglo-Saxon" economies (LMEs). By contrast, the former distinctions are glossed over in Hall & Soskice [2000 = 2001].

developments by Hollingsworth [1997], based on joint research underpinned by the SSP paradigm outlined above, and a more recent analysis of the historical roots of capitalist organisation in both Germany and Japan [Jackson 1999 = forthcoming].

Weiss [1998] broadly follows these lines of argument. She contends that many major economies other than Britain and the US have strong states with actual or potential "transformative capacity" in advancing socio-economic welfare, which will survive the onslaught of market forces world-wide. Most prominent examples given are from East Asia, especially Japan, where "governed interdependence" between government and business has arguably developed the richest variety of forms [ibid: 69-79]: "disciplined support" (eg subsidies for exports or tariff barriers, given to sectors only in exchange for improved economic performance), "public risk absorption" (to solicit cooperation of producers in new industries), "private sector governance" (industrial policy delegated to initiatives of industries, especially those in decline), and "public-private innovation alliances" (to develop and diffuse technology). These features of East Asian economies are characterised as the "socialization of producer risk", promoting industrial growth and transformation which is expected to provide increasingly high-value added employment. By contrast, "socialization of costs to employees" in corporatist Scandinavia aims at strong social welfare protection for those adversely affected by economic change in exchange for containing costs. This may not be enough to retain international competitiveness, Weiss suggests, which appears consistent with the pressures towards large transformations there since the 1980s also identified by Kritschelt et al. She sees more potential for Japan and Germany, with more balanced developmental and distributive capacities. Germany has also promoted industrial transformations through state intervention, although arguably less pervasively, while Japan exhibits more concern for distributive issues than indicated by aggregate data, through disproportionately important agricultural policy, sunset industry policies, legal and de facto measures to support employment, and significant policies for new businesses [ibid: 157-162]. This world-view underlies Weiss' conclusion that "nation-states will matter more rather than less", advancing rather than retarding the development of the world economy, due to "(1) state adaption rather than decline of functions, (2) strong states as "midwives" not victims of internationalisation, and (3) the emergence of "catalytic states" [like Japan] consolidating national and regional networks of trade and investment" [ibid: 196-7].

Importantly, however, all these studies are based primarily on research dating back to the mid-1990s. Subsequently, Japan's full-blown banking crisis in 1997 has been followed by accelerating deregulation and restructuring in financial markets, calling into question the "Japanese model", while the Asian financial crisis caused a reappraisal of market-driven methods of capitalist organisation. Weiss [1998: 155] had observed that "a resurgent Japan is not an unlikely outcome of the quiet restructuring and institutional consolidation of the early- to mid-1990s", but so far there has been little evidence of this. Instead, "regulatory forbearance" (the polite term used by Kanaya & Woo [2000: 4]) has characterised Japan's banking crisis, contributing to an enormous huge fiscal cost (12 percent of GDP has already been allocated to dealing with the crisis), as well as probably being largely responsible for the stagnation of the Japanese real economy all through the 1990s. The stream of bad economic news from Tokyo, described in the opening quote [Murphy 2000] and showing few signs of abating,[2] further undermines the view of contemporary Japan as a rather exemplary

2 For a sample over the New Year from the Mainichi Daily News, see eg "Sogo Shuts Down 8 Outlets" (26 December 2000) <http://www.mainichi.co.jp/english/news/archive/200012/26/news02.html>;

"strong state" with extensive "transformative capacity".

In more recent writing stemming from a conference held at the European University Institute in October 1998, Weiss [2000: 42-49] still maintains that: (1) Japan had experienced some growth during Japan's so-called "lost decade"; (2) the Asian crisis may have undermined an incipient recovery; (3) the policy response of Japan's policy-makers, waiting for asset values to increase, may therefore have been rational and certainly appears no better or worse than responses for instance to the US savings and loan debacle a decade ago; (4) Japan still retains transformative capacity in the form of links among business and key state actors, including the Ministry of Trade and Industry (MITI, as it was known) which has developed new industrial policy frameworks every decade (recently focusing on information and telecommunications infrastructure); and (5) deregulation was initiated by the Ministry of Finance to encourage Japan's financial sector also to "catch up".[3] However, most commentators stress instead the poorly thought out nature of financial markets deregulation beginning before Japan's big bang, the large scope of its bad loans problem, the likely massive contraction in the size of Japan's banking sector as even more firms move to capital markets financing [Hoshi & Kashyap 1999]; or the relatively obvious likelihood of the present banking crisis, yet Japanese policy-makers' comparatively slow response [Hutchison and McDill 1999].[4] Nonetheless, Weiss [2000: 48-49] concludes that:

> The Japanese model has been sorely tested by recession, low growth and the bank crisis. But in the long run, it may be misguided to hail every change as another nail in the coffin of Japanese capitalism. Indeed, far from Americanizing Japanese capitalism, financial reforms may end up reinvigorating it via creative adaptations of existing institutions.

Certainly, we must go beyond breathless reports of radical change emerging from some of the financial press over recent years [Dore 1999 = 2000; see also Rhodes & Higgott 2000]. The bewildering variety of conclusions reached by other commentators within Japan and abroad, especially in the US [Reich 2000], must also be scrutinised. Key parameters should be identified and quantified to determine whether the undoubted transformations in contemporary Japan imply a significant and rapid convergence on Anglo-American forms of capitalist organisation. Corporate governance in Japan can offer a central focus in this exercise, because it can be

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"Jobless Rate Hits 4.8%" (27 December 2000) <http://www.mainichi.co.jp/english/news/archive/200012/27/news01.html>; "Kumagai Gumi Gets 430 Billion Yen Debt Waiver" (29 December 2000) <http://www.mainichi.co.jp/english/news/archive/200012/29/news01.html>; "Chiyoda Life Made Shady 500 Million Yen Loan" (10 January 2001) <http://www.mainichi.co.jp/english/news/archive/200101/10/news01.html>.

[3] Since a reorganization of central government in effect since 6 January, MITI has become the Ministry of Economy, Trade and Industry (METI). For a list of its initiatives in relation to e-commerce, see <http://www.meti.go.jp/english/special/E-Commerce/index.html>.

[4] As one Japanese financial newspaper put it recently: "The nearly unanimous view among experts is that Japan will have to undergo radical surgery to overcome its current crisis, which is not limited to the field of finance, and should be prepared to shed considerable blood" ("International Financial Community Gives Japan a Thumbs Down [Kokusai kin'yukai mo mihanasu Nippon no kiki]" Toyo Keizai, 20 January 2001 <http://www.japanecho.co.jp/jeu/arti.html#t10>). One should also not forget Japan's "mini-crisis" with bad housing loans, prior to its full-blown banking crisis in 1997, another large financial debacle which was also characterised by moral hazard, regulatory failure, and sharp conflict: [Milhaupt and Miller 1997].

broadly defined to cover most aspects potentially relevant to this determination in a coherent fashion, incorporating readily available recent data. Just as existing institutions may require what Weiss terms "creative adaptations", however, so does the construction and application of theory in relation to Japan.

This paper therefore begins by arguing that problems of operating corporate bodies can be usefully conceptualised in terms of express or implied "agency" contracts among various stakeholders, especially managers and owner/shareholders, but also creditors, employees, suppliers or contractual partners outside the firm or other owners, and even local residents or government authorities (a type of "social contract).[5] This view does not necessarily entail, as proponents of neo-classical "law and economics" tend to believe [eg Easterbrook & Fischel 1991], that all such contracts should be freed of any mandatory elements. But the approach is useful because it focuses on common problems underlying all these stakeholder relationship. The main problem is incomplete information. If all shared full information, for instance, shareholders or creditors would not have to worry about managers wasting their money. Yet in the real world, incomplete information gives rise to the dual problems of "adverse selection" ("hidden information", resulting eg in creditors accepting to lend money to what turn out to be generally high-risk firms) and "moral hazard" ("hidden action", eg managers investing loaned funds into excessively high risk projects). These difficulties are compounded by others: the inability to write contracts for the stakeholder relationships which expressly provide for all possible contingencies, because of the limits we face in foreseeing future scenarios [Hoshi 1998: 849-850], *and* the inability to perfectly enforce those contracts.[6] These definitions of "adverse selection" and "moral hazard" applied by Hoshi to analyse corporate governance may not accord precisely with their usage initially in the context of insurance, but they do highlight underlying problems of opportunism and bounded rationality [Williamson 1996].[7] They can be usefully developed to uncover and

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5 Cf also Kester 1991; Ballon & Honda 2000. However, Tsuru [1999: 3] cautions for instance that such a broad definition of corporate governance may risk analytic looseness [see also Cioffi 2000]. Readers of this paper should judge that for themselves.

6 Enforcement problems have often been highlighted in Japan. Indeed, Milhaupt & West [2000] find strong statistical correlations between areas where problems exist and activities of criminal organizations.

7 As Gary Hawke has written (personal communication, 10 April 2000):

"... the terms [adverse selection and moral hazard] originated in the insurance world. The former was essentially that insurance pooling was based on random incidence of risks, whereas those most subject to risk were more likely to insure than those where the risk was relatively light. So the insurance company would get its sums wrong. "Moral hazard" related to behaviour after insuring. The client now faced less cost if the risk should crystallize and so needed to take less care. Again the insurance company would get its sums wrong because it underestimated the cost of risks which crystallised. But the terminology then got generalised loosely. In particular, it got taken into principal-agent analysis on the basis that principals and agents enter into an agreement but each has a temptation to cheat - the principals shift risk to agents if possible so that an agent discovers that the task is more difficult or less rewarding than was expected - adverse selection - and agents pursue their own interests rather than those of principals - trade for themselves as well as their principals and allocate the profitable ventures to themselves rather than to their principals - moral hazard. What is important is "opportunistic behaviour" and there is an arbitrary element in the choice of viewpoint that will give a resemblance to a particular form of opportunistic behaviour - moral hazard, adverse selection, and a range of other terms that are useful for teaching purposes but ultimately are unimportant labels. ...

The term "opportunistic" immediately directs attention to information. In the insurance world, the examples above depend on the company and the client having different information - about the risk of structure empirical data concerning relations involving managers and shareholders (Part II below), creditors of the firm (Part III), and employees (Part IV). The overall picture is one of significant rapprochement of manager and shareholder interests; severe challenges to post-War bank-financing measures; but less obvious or perhaps only longer term pressures reshaping employment relations.

Yet raw opportunism may not be the only force at work (Part V). Seemingly robust patterns of cooperative relations have developed among firms in some industrial sectors, especially in the automobile industry, notably in post-War Japan but later finding root in the US. The attraction of this model, entrenching trust through quite radical information gathering and sharing among expanding groups of participants, may encourage the emergence of novel forms of corporate governance [Helper, MacDuffie & Sabel 2000], even if the overall trend in Japan nowadays is towards more arm's length relations. Arguably, a key determinant will be whether similar processes of "learning by monitoring" take root also at the level of the Japanese state, another key stakeholder in corporate organisations. Adding this contingency further clouds a final assessment of whether Japan will converge on neo-liberal models. But such refinements add new perspectives on the ongoing debate on "varieties of capitalism". In particular, by uncovering possibly conflicting tendencies at different levels of socio-economic and political ordering, they take us beyond views of pervasive transformations and blanket convergence on the one hand, or little change and persistent differences on the other.

II. Shareholders as Primary Stakeholders

The agency problem between shareholders and managers remains usually the most important aspect of corporate governance, at least for large publicly held companies.[9] To counter the informational advantage held by managers, basically two types of systems are available to shareholders. The first is "control oriented". That is, the shareholders monitor management behaviour, often delegating this to a Board of Directors whom they elect; and they intervene if necessary, eg by a proxy vote fight to replace Directors and hence managers. However, the costs involved in this system usually make it more attractive to large shareholders with good management skills themselves. A second system available to shareholders, "arm's length" control, is more passive; the shareholders do not actively intervene in management. However

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a particular proposal relative to the average, and about how the behaviour of the client will respond to an insurance contract. ... As an economic historian, I usually start discussion in this area from nineteenth century British banking. Shareholders of banks could not free themselves from an additional reserve liability; on liquidation they were liable for an amount equal to their shareholding - they therefore had an incentive to keep an eye on managers - and furthermore, the liability was "joint and several" so that each shareholder had an incentive to keep an eye on the wealth of those admitted to the register since if any went bankrupt their liability passed to the rest of the shareholders. (As happened in several cases). Creditors of banks got some confidence from such provisions. Why did they give it up? (Not until the 1950s in New Zealand but it was a dead letter before then.) The basic answer is the development of auditing and auditors' certificates. Creditors had an alternative agent and could concede greater flexibility to bank managers and relieve shareholders from acting as watchdogs on one another and let them focus on directors."

9 There are about 9,000 such companies in Japan [Kanda 1998 contains useful further background corporate data], including about 6330 with sufficient capital for listing [Yasui 1999: 3].

they take action when unsatisfied with managers, especially by selling shares, which may lower share prices and encourage eg hostile takeovers. Employee share ownership programmes (ESOPs) can also facilitate such indirect control, by turning employees into another type of stakeholder - shareholders. Another way to motivate managers to work for shareholders is to create common interests, eg through high-powered incentive methods such as very profit-sensitive bonuses or stock options [Hoshi 1998: 851-2].

For most of the post-War period in Japan, “arm's length” control has been weak; but this has begun to change since the 1990s. On the one hand, stock option schemes were legalised in mid-1997. By January 1999, 165 companies (96 listed) had introduced them, including some of Japan's largest companies as well as new start-ups (in internet or family-care business).[11] In turn, this may begin to affect a longstanding reluctance to remunerate executives of Japanese corporations as highly as their counterparts overseas.[12] Further, bonuses in Japan have been linked to profits generated – in fact, more so (ironically) than dividends paid to shareholders – but not linked closely enough to generate in itself what Hoshi calls a "high powered" incentive for managers to work in shareholders' interests. However, even the bigger firms nowadays, despite their tradition of "life-time employment" with promotion based primarily on seniority, are beginning to introduce performance related wage differentials (see Part IV below). These transformations in labour relations may also reactivate ESOPs as an incentive for good management. So far in Japan, although ESOPs have been adopted by a large majority of listed companies and collectively amount to significant percentage shareholdings, they have not encouraged more dividend payouts nor acted as a mechanism to independently control management [Hayakawa 1997: 243-4]. Instead, reliance has been placed on "career concerns" -- tying reputation to company performance [Tsuru 1999: 5]. This is now undermined by economic stagnation.

On the other hand, other types of arm's length control *have* long operated in Japan, albeit not always so obviously; and they too are becoming increasingly important. Commentators have long stressed the lack of hostile takeovers in post-War Japan, due in large part to the development of extensive cross-shareholdings among firms. The precise historical roots of this tendency remain unclear, although most accounts point to stock market weaknesses soon after World War II, when capital was needed by companies and the threat of takeovers was high. Ironically, cross-shareholding also may have emerged because Japanese corporate law further extended substantive rights to shareholders, influenced by US law, yet many of those rights have remained mandatory [Shishido 2000: 211]. Japanese managers therefore may have encouraged the development of cross-shareholding as an alternative way to protect their interests [see also Takahashi 1997: 232]. Managers in the US and elsewhere have been able to invoke other techniques more recently, through tailoring their corporate constitutions etc (eg “poison pills” whereby a debenture etc must be issued if an investor purchases more than a set percentage of shares, or arrangements to limit to voting rights to a minority percentage even if the investor obtains more than that percentage of shares).

Whatever the historical origins of the comparative lack of hostile takeovers in post-War Japan, the normative force of this phenomenon has been shaken by recent

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[11] [Yasui 1999: 16]; “Introduction of Stock Options in Major Firms” 39/9 Japan Labour Law Bulletin (2000) <http://www.jil.go.jp/bulletin/year/2000/vol39-09/03.htm>.

[12] [Yasui 1999: 6].

developments. On 24 January 2000, Shoei Corporation was subjected to a hostile bid from a Japanese firm called M&A Consulting (MAC), led by a former senior official at MITI and financed by Orix Corporation, a large leasing and financial services provider [Milhaupt 2001: 21-23]. Although it only obtained 6.5 percent of the target, in which cross-shareholders controlled two-thirds of outstanding stocks, MAC went on to propose two shareholders' resolutions and secure proxy votes at Shoei Corporation's annual general meeting on 28 March, garnering 30 percent support.[12a]

The emergence of such nonconformist "norm entrepreneurs" are partly a reflection of the changes in Japan over the 1990s. But they build on some less obvious arm's length control mechanisms which remained operative throughout the post-War period. So-called "friendly" takeovers or mergers often occurred in the context of poor performance, reflected in weak share prices. Importantly, from the perspective of shareholder/management agency theory, there is strong correlation between share price weakness and resignations of managers [Kaplan & Ramseyer 1996; Tsuru 1999: 6]. While managers are not replaced by those taking over firms in hostile bids, they retire "voluntarily". Shishido [2000: 216] provides one important causal explanation for this pattern: Japanese firms who perform badly on the sharemarket find it difficult to raise equity finance, and that makes it more difficult to obtain debt finance from banks. That pressure will be all the greater in recessionary times, as in Japan nowadays. Conversely, he notes some recent evidence that pressures from the Japanese share market already are forcing some firms to restructure their labor relations, and then signaling satisfaction with that management response in the form of higher share prices [idem, fn 112]. Overall, moreover, aggregate cross-shareholding in publically traded shares has declined since the stock market collapse and burst of Japan's "bubble" economy in the early 1990s [Takahashi 1997: 233-4]. Indeed the pace seems to be accelerating, cross-shareholding ratios of around 21% from 1986 to 1995 (money base) declining to 16% in 1998 [Shishido 2000: 226, Table 6]. More declines can be expected. Indeed, there were reports of Japanese corporations winding down cross-shareholdings vigorously in the first quarter of 2000 to improve their balance sheets before the end of the fiscal year, taking advantage of a brief revival of the Japanese stockmarket in 1999 [US Embassy Tokyo 2000].

What life has remained in the stockmarket over the 1990s has been due in large measure to investment from abroad.[13] Particularly noticeable in recent years is more interest from foreign institutional investors, such as pension and investment funds, whose growing presence in Japan was noted already in the mid-1990s [Hayakawa 1997: 243]. Although nowadays driven in part by the much bigger boom in the US share market, another key development has been the deregulation of financial markets in Japan in recent years (Part III below). While these institutional investors may become less prominent in Japan if there is a major downturn in the US, they surely will remain a significant new feature of Japanese financial markets. As in other countries [see eg Coffee 1991, 1997], they should continue to inject more arm's length control into the corporate governance system in Japan [Fukao 1999].

One related indication of this is more attention among managers towards efficient use of capital and return on equity. Many companies have provided for share

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[12a] See <http://www.maconsulting.co.jp/achiev.htm> (also reporting other recent aggressive activities of this entrepreneur).

[13] By the end of the decade, foreigners held about 10 percent of listed shares, and 12 percent of listed Japanese companies have 15 percent or more foreign ownership [Yasui 1999: 14].

buybacks following amendments to the Commercial Code in 1995 and especially 1998, although fewer have actually carried out repurchases [Yasui 1999: 16] and Dore [1999 = 2000] questions whether greater attention from managers to these indices reflects more promotion of shareholder interests as opposed to faddism etc. Another aspect is relaxations in December 1997 on the creation of holding companies, seen by Shishido [2000: 223] as a possible answer to a set of key problems in Japanese conglomerates so far: accountability and determination of profit centers [Yasui 1999: 18; see also Thorson & Siegfranz 1999]. These may also be addressed by recent amendments to facilitate corporate reorganisations [see generally Nakahigashi 2000].

Significant changes in accounting rules for listed companies underpin such developments, expanding possibilities for "arms' length" control.[14] These have been prompted in part by massive discrepancies in reported financial statements for failed financial institutions, as well as mistrust of internal auditing procedures after a series of well publicised problems involving corporate racketeers [Yasui 1999: 13]. Consolidated disclosure of contingent liabilities, such as guarantees (common in Japanese corporate finance), took effect in April 1998. The following year, the scope of subsidiaries and affiliates which had to be included in accounts was expanded. From April 2000, all marketable financial assets held for trading purposes had to recorded at market price rather than book value, and market value accounting also for cross-shareholdings and long-term securities holdings is required from April 2001. From April 2000 or (optionally) 2001, moreover, listed companies must disclose unfunded pension liabilities by valuing pension assets and liabilities at market price. This already has highlighted further difficulties in some of Japan's largest firms,[15] and all these changes make evaluation of shareholdings more transparent and objective.

In parallel, potentially important developments have started to transform "control-oriented" shareholder mechanisms. The "main bank" system has been central in this regard for most the post-War period. It involved a bank – usually with the largest shareholding, albeit limited under the Anti-Monopoly Law (AML) to five percent or less – sending its own managers to direct operations of debtor companies performing too badly. The system is coming under pressure also due to the recession, particularly as it has affected Japanese financial institutions, combined with deregulation of the financial sector (Part III below).

By contrast, smaller or less powerful shareholders in Japanese companies have faced a major obstacle in exercising more direct control over managers: the emasculation of the Board of Directors, due to the tradition of appointing Directors from among managers, usually resulting in very large Boards.[16] This too has been related to patterns of life-long employment in (at least top-tier) Japanese companies.

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14 See [US Embassy Tokyo 2000]; "Dawning of the New Accounting Age" Japan Economic Update (April 22/25, 2000) <http://www.japanecho.co.jp/jeu/arch/000422.html#t3>; and especially the regularly updated website of the Japanese Institute of Certified Public Accountants <http://www.jicpa.or.jp/n_eng/e-newsflash.html>. On the centrality of the relationship between accounting rules and corporate governance, cf generally [Grossfeld 2000]. See also the pressures towards convergence created by securities law reforms world-wide, arguably more significant than changes to corporate law rules: [Coffee 1999].

15 See eg "What Will Ghosn Do About Nissan's 400 Billion Yen Pension Debt?" Japan Economic Update [April 22/25, 2000] <http://www.japanecho.co.jp/jeu/arch/000422.html#t4>.

16 In July 1998, the average number of directors in listed companies was twenty, and 49 had forty or more [Yasui 1999: 5].

Combined with *keiretsu* and other links within groups of companies,[16a] this tradition also has tended to make the "statutory auditor" scheme largely ineffective in monitoring management [Yasui 1999: 5].

This cosy system is now challenged by more appointment of outside directors. Boards are also being downsized to promote more effective decision-making. An early example was Sony, always an innovator, and now with particularly high foreign ownership [but see Dore 1999 = 2000]. But of the two thirds of listed companies which responded to a September 1998 survey, 30 percent had appointed outside directors and reduced the size of the Board [Tokyo Stock Exchange 2000: 3]; and by May 1999, about half of the 17 major banks had introduced executive officers (instead of directors) and downsized their Boards [Yasui 1999: 20]. Lateral pressure came from the Corporate Governance Forum, established in 1994 by a former president of the Industrial Bank of Japan (now merged into the Mizuho group) and now co-led by Orix Corporation chairman Yoshihiko Miyauchi. The Forum published Principles of Corporate Governance in 1997 [Gibson 1998: 14], and calls for corporate governance rules reforms similar to those espoused by the OECD and the California Public Employees Retirement System (CALPers). Also important are direct pressures from institutional investors, especially from abroad like CALPers. Further, as foreign direct investment in Japanese companies grows [Bonacker 1999], outside directors should become more common. To be sure, so far the most salient examples of outside appointments to the boards of Japanese companies have been from large foreign investors in very weak companies.[17] These have mainly been as *managing* directors, rather than non-executive directors theoretically better able to monitor for shareholder interests. Yet, as outsiders, even this tendency disrupts the traditional Board structure in Japanese corporate governance. Even some insiders are becoming less predictable, with a number of prominent presidents having reached their position through career paths outside the mainstream within their companies, including lengthy periods abroad. They have taken initiatives in increasing truly independent statutory auditors, promoting disclosure, and so on [Tsuru 1999: 11]. All these developments help explain why a Study Group sponsored by MITI, regulating and supporting most areas of industry in Japan, has proposed significant reforms to Japanese corporate law by 2002, including more outside directors and other measures to separate management from monitors of corporate activities.[17a]

16a In a typically provocative paper, [Miwa & Ramseyer 2001] contend that main-bank or horizontal *keiretsu* are no more than a "fable" concocted first by Marxist economists in Japan in the 1960s. While presenting some econometric data suggesting that financial links cementing firms in such corporate groupings are not significant, however, they do not test for personnel exchanges among group firms.

17 Such as Renault in Nissan (see eg "Nissan's Restructuring Plan and the Union's Response", 39/1 Japan Labor Bulletin (2000) <http://www.jil.go.jp/bulletin/year/2000/vol39-01/03.htm#2>; "Putting Nissan Back on Track" Japan Echo [April 2000]: 36 <http://www.japanecho.co.jp/docs/html/270211.html>); DaimlerChrysler in scandal-stricken Mitsubishi Motors (see eg [Nottage 2000c]). See also "Merging Japan" OECD Observer [24 February 2000] <http://www.oecdobserver.org/news/fullstory.php/aid/198>.

17a One of the largest pension funds in the world, CALPers increased significantly its investments outside the US in the mid-1990s, calling for improvements in corporate governance in countries like Japan in which it increased exposure: <http://www.calpers.ca.gov/about/factglan/corpgov/corpgov.htm>. It has since teamed up with the large UK fund, Hermes (<http://www.hermes.co.uk>), to advance such causes. However, appointing outside directors is not only a foreign concern: "According to a survey by [Japan's] Life Insurance Association, 42% of companies and 84% of institutional investors [in Japan]

Involving outside directors, and heightened attention generally to shareholder rights in the 1990s [Kitagawa and Nottage 1998], are trends related to a strengthening of the ability of all shareholders - including minority shareholders - to enforce their rights. Especially in shareholder derivative litigation, the key seems to have been a legislative amendment in 1993 which set filing fees at a uniform 8,200 Yen (less than US$100). There were only 74 derivative action cases pending in Japanese district courts in 1993; but this jumped to 133 in 1994 and to 158 in 1995 [Shishido 2000: 197 fn 35]. In 1997, there were 219 derivative suits pending before District and High Courts [Tsuru 1999: 10], and 286 pending by the end of 1999 [West 2000a: 9, Table 1]. By 1998, half of listed companies had taken out insurance covering directors against certain claims [Dore 1999: 22 = 2000]. This procedural change thus has significantly reinforced the comparatively strong substantive rights of shareholders under Japanese law [see also Kawashima and Sakurai 1997]. Further, in late 2000 the Osaka District Court awarded a record 83 billion yen in damages against 11 former directors of Daiwa Bank, in a shareholders' suit based on poor supervision resulting in illegal bond trading by the bank's New York office [Milhaupt 2001: 24]. The collapse of the Sogo department store chain resulted in another massive claim against its founding president in 2001; and on 12 March, a lawyer belonging to the "Kabunushi Ombudsman" watchdog group filed suit against 11 former and current directors of Mitsubishi Motors Corporation for 1.17 billion yen, demanding they take responsibility for 1.5 billion yen in lost vehicle sales resulting from concealing defect claims. These events have prompted business interests to call for amendments to the Commercial Code to restrict liability exposure of managers, but strong opposition is being voiced.[18] By expanding the capacity of all shareholders to directly or indirectly control managers, the burgeoning shareholder derivative litigation makes it more difficult for key shareholders (such as main banks) to act in their own interests (or of blocks such as creditors) to the detriment of shareholders overall [Yasui 1999: 10]. Thus, "control-oriented" supervision of managers by main banks is further displaced by actual or potential supervision through shareholders more generally.

III. Creditors, Recession, and Financial Market Deregulation

A distinctive feature of post-War corporate governance in Japan has been the greater importance of creditors as stakeholders, due to comparatively more use of bank rather than equity finance. Yet this characteristic has been fading over the last two decades, as companies accumulated retained earnings and gradual financial markets deregulation permitted them to more readily raise funds through bond issues and so on. Already in mid-1997, before the banking crisis, a survey of managers found that 60 percent expected the role of "main banks" to decline [Yasui 1999: 12]. The relative

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suggested that outside directors would stimulate the debate, add new perspectives, and strengthen monitoring" (Nicholas Benes, "Finally, Corporate Japan Begins to Shift into Reform Gear", Asian Wall Street Journal, 8-14 January 2001, 16). More generally, Japanese institutional investors recently "were urged by the Employees' Pension Fund Association, the effective leader of [Japan's] corporate pension sector, to exercise [voting rights at shareholders' meetings] to the advantage of pensioners". US consulting firm Institutional Shareholders Services entered the Japanese market in April 2001 aiming to show them how to best do so: "Japanese Shareholders to be Schooled in How to Exercise Voting Rights", Nikkei Weekly, 12 February 2001, 12.

18 "Conditions Required for Limits on Corporate Lawsuit Redress", Asahi Shimbun, 29 December 2000; "Shareholder Group Sues MMC Over Cover-Up", Mainichi Daily News, 13 March 2001. On the reform discussion, see [West 2000a: 10, fn 20].

importance of capital markets in corporate finance will undoubtedly expand in importance in the wake of ongoing economic stagnation and the current severe credit crunch, combined with globalisation and broader financial market deregulation. The latter program was initiated at the end of 1996, but mostly from 1998, due to poor return on capital by Japanese financial institutions throughout the post-War period, and especially a rapid loss of global competitiveness in the 1990s. This "Big Bang" (or "Long Bang"!) is now almost complete, and the legislative and structural reforms are very wide-ranging.[19]

As mentioned above (Part II), like other stakeholder relationships, the relationship between creditors and managers gives rise to problems of adverse selection (leading to credit going too readily to risky firms) and of moral hazard (monitoring problems allowing poor projects by management). Blame for the abrupt decline in the Japanese financial sector over the 1990s lies in part with the Japanese government, particularly the Ministry of Finance (the Bank of Japan having become a more independent policy maker only recently). Yet Japanese financial institutions were also responsible for their own plight, having embarked on a huge spending spree in the late 1980s, which has led to the massive bad debts reported in recent years [Reszat 1999]. Generally, this disaster stems from distortions in evaluating and pricing risk [see Keidanren/21CPPI 1999]. Specifically, it relates to problems in corporate governance which encouraged financial institutions in Japan to lend (and invest) in risky firms, and then not adequately monitor managers in those firms [see generally Dickie 1999: 10; Kanaya & Woo 2000].

One solution for these tensions between creditors and managers is to give creditors shares in the companies they lend to. This helps to the extent that shareholders generally can overcome agency problems vis a vis managers (on which, therefore, see again Part II). In addition, creditors can attempt to control managers in two main ways. One, again, is more "arm's length" control. The creditor still delegates much control to managers, but may step in to force bankruptcy, thus creating an incentive for managers to pursue creditors' interests [Hoshi 1998: 853]. However, forcing bankruptcy must be a credible option, and Japanese bankruptcy law has had various problems which only started to be addressed seriously towards the end of the 1990s [for an overview , see Anderson 2000: 700-24]. One result has been enactment of a more functional corporate reorganisation regime in 1999, generating 392 proceedings within the first six months of coming into force on 1 April 2001 [Kaiser 2001].

Alternatively, or in addition, creditors can adopt more control-oriented strategies. They can monitor more directly the behaviour of managers, and intervene if necessary in their appointment or replacement. One way in which Japanese banks have been able to directly monitor their lenders' managers, at least within Japan, has been by providing a range of services (eg general business advice or match-making) rather than just loans. Yet that was difficult in overseas lending; and encountered difficulties domestically as Japanese companies themselves became more sophisticated, and competition intensified as a result of accelerating financial markets deregulation. The latter, combined with the recessionary environment facing Japanese financial institutions in particular, also makes it more difficult to retain the long-term relationship required to be a firm's "main bank" [Yasui 1999: 12-13]. Key

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19 A comprehensive recent time-line is available from the Ministry of Finance's website, at <http://www.mof.go.jp/english/big-bang/ebb33.pdf>; see also [Sibbitt 1998, Kanda 1999]. See generally [Egarashi 1999, Malcolm 1998].

aspects were a primary lender which also held shares over lengthy periods, and intervened especially in times of debtor's financial distress by seconding bank managers. As banks become strapped for funds, however, they may call in their loans or simply refuse to lend more; an increase in lender liability claims by debtors was noted already in the mid-1990s [Milhaupt 1996: 49-55]. More recently, other cases have been reported in which main banks did not save companies by providing loans, while in other instances they did not bear a disproportionate burden of losses following liquidation. A related phenomenon is a belated "flight to quality" in lending, perversely exacerbating the present credit crunch. Finally, there is evidence of banks selling off their shareholdings, reportedly after client firms offloaded their stocks in banks, and in the shadow of dangerous declines in the ratio of market over book value (4:1 in 1986, but only just over 1:1 in 1998 [Fukao 1999: 6-8]). Unwinding shareholdings prevents financial institutions remaining or developing into a main bank, better able to monitor debtor firms, and creates less incentive to send their own managers to debtor firms if in distress (especially as even the big banks have enough problems of their own nowadays!). Reputation as a main bank can unravel quickly, and is difficult to regain [Tsuru 1999: 8].

Such breakdowns become even more likely as more and more foreign financial institutions have taken advantage of deregulation to enter the Japanese market since the late 1990s [Sibbett 1998]. These outsiders are particularly likely not to take over, and certainly not take on, even small shareholdings in debtor firms in such a changing environment. Even if they do, they may refuse to "take turns", accepting the delegation of other creditor/shareholders to send valuable management resources to help keep debtor firms alive. Their inclination, no doubt often in their short-term interest, may be to enforce their strict legal rights, calling in their security or forcing bankruptcy.. After all, lending institutions (and associations) in Japan have long made sure that their strict rights are well protected by contract and commercial practice at the time of lending [Kanda 1998: 940; cf Milhaupt & West 2000].

Three other factors now undermine the main bank system [Milhaupt 2001: 19-21]. The first arises from the nationalisation and re-privatisation of the failed Long-Term Credit Bank. The government sold it to a group of foreign investors including Citigroup, giving a "put option" to return any assets (loans) that decline from book value (as of 1 March 2000) by 20 percent or more within three years. But this is lost if the bank accepts a borrower's request for loan forgiveness. In mid-2000, the re-privatised bank refused to forgive debts owed by Sogo Department Store, forcing it into bankruptcy, going against what has been expected a main bank. More generally, bank failures like this one undercut an implicit guarantee against this given by the Japanese government [Milhaupt and Miller 1997], in exchange for strong institutions supporting weak ones through the main bank system. Finally, the Asian financial crisis and Japan's long recession are perceived to have caused a significant shift in beliefs about the benefits of bank-oriented corporate finance and governance.

Theoretically, there is some possibility of Japanese financial institutions instead starting to accumulate larger shareholdings in debtor firms, hence positioning themselves for *more* control-oriented monitoring of debtor firms. This could follow from an amendment to Article 11 of the AML, as clarified by Japan Fair Trade Commission Guidelines, whereby a financial institution can hold more than 5 percent of shares issued by a company, if the latter's business was subordinated to the former's, "at least 50 percent, in principle". Previously, this was only allowed if "at least 90%, in principle" [Sibbitt 1998]. As more and more firms are permitted to add financial services to their operations, this route may lead to banks being able to take greater shareholdings in them. Yet it still does not remain open for investments in companies whose main business is not related to financial services, even in the new broad sense. In addition, as the economic recession and problems in the financial sector persist, it seems unlikely that financial institutions in Japan will want to try to invest broadly like this. Rather, we can expect more sell-offs in the small shareholdings held so far, and consequent ongoing decline in the main bank system as a key corporate governance mechanism in Japan, although it may remain important for smaller firms [cf Koen 2000].

Domestic institutional investors, whose buffers of unrealised gains in land and shares have also been sharply eroded, will find it difficult take up this slack, at least on the basis so far of them implicitly assuming disproportionate risks through such buffers. This reinforces pressures to (1) allow defined contribution pension plans improve disclosure and accountancy rules to attract foreign investment,[20] (2) restore faith in investment trust management to encourage more individual investment on the Japanese sharemarket, (3) improve disclosure and accountancy rules to promote further investment from abroad, and (4) further encourage share buybacks [Fukao 1999].

IV. Employees and the Vicissitudes of the Labour Market

Another often cited aspect of Japanese corporate governance, especially through to the 1980s, is the strong influence of employees [eg Miwa 1998, Yamakawa 1999a]. The conventional wisdom has been that Japanese corporate governance was profoundly influenced by the orientation of companies first towards "people" (ie employees), then "products" (ie technically excellent goods), then "profits" (for shareholders). This is contrasted with the German model (fixated first on products, then people, and then profits), and especially the Anglo-American model (first profits, then products, people last!).[21] The importance of employees in Japanese companies, at least "regular" employees in larger ones, has admittedly been strong. Yet this factor can also be analysed in terms of agency problems, and how their stakeholding in companies relates to that of other stakeholders. That analysis, together with observed tendencies in the labour market and important legislative amendments, points to further growing pressures on Japanese corporate governance.[22]

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20 Broader based reform of the state pension scheme also seems important, since this underscored the shift in corporate governance in the US and had dampened that in Germany [O'Sullivan 2000].

21 [Lehmann 1997: 96-99]. This picture accords with some survey evidence included in a book published in 1997 by a Kyoto University economics professor: [Tachibanaki 1999: 51].

22 Somewhat similarly, Fukao [1999: 21, 23] predicts the following realignment in various stakeholders' proportional "claims" to company assets, namely from:

(1) Creditors > Core Employees > Top Executives > Shareholders (but only realized profits that could be used as dividends) > Other Employees

to:

(2) Creditors > Smaller Group of Core Employees > Top Executives > Shareholders (all profits, including unrealized profits) > Other Employees

By contrast, Haley [2001, before fn 19] insists that Japan will not change its fundamentally "communitarian" orientation without change in what sees as the most distinctive and central institutional feature of post-War Japan: "entry level hiring coupled with a central personnel office staffed by senior career manager[s] with full responsibility for the recruitment, training, assignment and promotion of career staff". As leading US commercial law professor James White pointed out in response to Haley's

Usually, discussions of relations between employees and managers centre on the latter as "principals", attempting to hire the former as "agents" despite the possibility of adverse selection, and to monitor their delegated activities despite moral hazard ("shirking", due again to imperfect information in the relationship). This can simply be reversed to analyse implications for corporate governance. The problem then becomes how employees, as principals, constrain managers, agents who may prefer to fritter away company funds on themselves. Again, one solution is to give employees shares in the company (through ESOPs and the like), but this will only constrain managers to the extent that agency problems between shareholders and managers is resolved generally (Part II above). Otherwise, the only realistic alternative is more control-oriented measures. One example is the two-tier board structure for Germany stock companies, in which a supervisory board is partly elected by employees, and then appoints management board members [Roe 1999]. Japanese corporate law provides no such formal mechanism for employee supervision of managers. Yet control arises in practice especially because most managers in large Japanese companies have been appointed from among existing employees, in a system of life-long employment and promotion based primarily on seniority. Correspondingly, the external labour market has not grown much in recent decades.

Again, the origins of such institutions are unclear. Like several supposedly distinctive features of Japanese law (such as limited numbers of practising lawyers [Haley 1978]), the practice of lifelong employment seems to have taken root only quite recently [cf also Foote 1996; Jackson 1999 = forthcoming]. Gilson and Roe [1999: 520] observe that "from World War I through to the end of World War II, worker mobility in external labor markets eroded labor stability when labor was tight, and employees' willingness to fire even senior workers eroded labor stability when labor markets were not tight. Employees tried but failed to build wage and seniority structures to induce workers to stay during labor shortages. Government intervention reduced but failed to stop turnover". They argue that lifetime employment practices arose in the even more unlikely economic environment shortly after World War II, characterised by extreme labour surplus, because of exceptional political events. Rapid unionisation and radical worker activism (strikes and plant takeovers) prompted conservative reactions and a "deal" establishing a privileged segment of labour (mainly surviving employees) accorded lifetime employment. Thereafter, "Japan's economic problem was to craft associated institutions that could function effectively given the politically imposed lifetime employment", including restrictions in external labour markets [ibid: 524]. Yet nowadays Japan faces a very different political as well as economic environment, with record unemployment (and further "under-employment"), and institutional changes opening up the possibility again of increasing worker mobility through external labour markets. Gilson and Roe [ibid: 540] also identify several significant "stress points" in the post-War Japanese system. For instance, it does not cope well during times of dramatic technological change,[23] and "competition" among lifelong employees for promotion in an internal labour market will

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paper, this pattern has been pervasive among large companies in the US (TWA, GM, etc). Even more compellingly, Masako Kamiya responded that the pattern seen as central by Haley is irrelevant to the large majority of Japanese firms and employees (many still with only high school education). More generally, Haley did not provide any empirical data on labour market changes or perceptions, and legislative changes, as presented in Part IV of this paper.

23 Including significant developments in IT in the late 1990s, after an admittedly slow start at least compared to the US: [Nottage 1998a].

not work effectively when firms no longer are growing.

Rather similarly, Shishido [2000: 222] points out that labour turnover rates in the 1920s and 1930s were almost the same as that in the US, but the latter jumped in the 1940s and has remained much higher ever since. He argues that the transformation in the US was linked to the Great Depression, and that if the Japanese recession continues there will be an irreversible decline in lifetime employment as a key aspect sustaining the post-War corporate governance system in Japan. More generally, ongoing recession creates a zero-sum situation and heightens conflicts between employees and other stakeholders, notably shareholders. The latter will no longer tolerate employees being treated as de facto residual claimants, for instance earning wage hikes or salary bonuses while dividends remain constant or decline.[24] Shishido [ibid: 217] also identifies a parallel strengthening of the external labour market and the corporate control (share-)market.

Labour law scholars such as Yamakawa [1999a], perhaps due to reliance on more historical data, are more impressed by the enduring quality of the post-War model; but note a number of major challenges to this model. One is precisely the broader political economy environment. The recession plus deregulation create more variability in corporate profitability, a key factor as the credit crunch still facing Japanese financial institutions further encourages companies turn to stock and bond markets - often global, and more demanding of good corporate/managerial performance. In addition, the service sector continues to grow in importance, bringing the need for (and the possibility of) more flexible working hours [cf also Hanami 1999a]. Both factors are related to changing demographics in the labour force generally, characterised by more elderly people, women, and part-time workers [Kezuka 2000]. This also affects the resilience of lifelong employment as a core concept in the Japanese corporate world. Yamakawa [1999b: 3] still concludes that it will remain, albeit with some modifications. In particular, he relies on a 1999 survey of the Japanese Institute of Labour in which 33.8 percent of respondents (690 companies out of 2370 employing 1000 or more people) declared they intended to maintain the life-long employment system; 44.8 percent said it had to be partially modified; and 17.1 percent said it needed radical reexamination.

Suzuki [1999:10] suggests that "some persistence of the long-term employment practice" is indicated by a survey conducted in February 1999 by the Research Institute for the Advancement of Living Standards, a think tank funded by the Japanese Trade Union Confederation (Rengo). Senior managers from 731 out of 1307 companies listed on the first section of the Tokyo Stock Exchange mostly thought that it was "not probable" over the next five years that "employees with short length of service become ordinary even in the core members" (59.4%); only 11.56

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[24] Hitherto uniform and almost ritualized, collective wage bargaining in spring 2000 was distinguished by no basic wage increases, even in the largest firms. Further, in the important steel industry, the five major companies broke with tradition in giving two differing sets of small increases. Finally: "A Ministry of Labour survey suggests it is likely that the average pay hike in percentage terms will be around two percent, lower than the previous record low of 2.21 percent last year. Many labor leaders believe that the outcome of this year's wage talks reflects an on-going shift in the priority which management is now giving to shareholders at the expense of employees, a situation they view with alarm. See "2000 Spring Offensive: Signs of Change" 39/6 Japan Labor Law Bulletin (2000) <http://www.jil.go.jp/bulletin/year/2000/vol39-06/02.htm>. Possibly related, or of indirect potential importance, is the merger of new industry-based unions and the creation of some totally new ones: "Reshuffling of Industry-based Unions" 39/10 Japan Labor Law Bulletin (2000) <http://www.jil.go.jp/bulletin/year/2000/vol39-10/04.htm>. Cf generally [Sako 1999].

thought it "probable", with 27.1% unable to guess and 0.8% reporting it "happening now". However, a similar majority (56.6%) thought it probable that promotion would come to be based on performance rather than seniority, a trend also acknowledged by Yamakawa. The Rengo survey also shows that most managers tended to expect significant changes in manager attention to Return on Shareholder Equity and management monitoring mechanisms.

Further pressures on the lifelong employment system is provided by a survey by a Labour Ministry working group in January 2000. It found that only 9.5% of 591 respondent firms continued attaching importance to life long employment, while 38.3% did not and 51% did so only on a limited basis.[25] However, a problem with all these surveys is that they question incumbents within firms. To get a better picture of the future of this central aspect of Japan's employment and corporate governance systems, more research should be conducted into what young people want nowadays. Certainly it seems that they are disillusioned with the fact that present employment patterns in Japan are strongly biased towards the incumbent, older generation, especially those in lifelong employment [Genda 1999].

Finally, Yamakawa [1999b: 1-2, 5-14] surveys major changes recently made to an array of labour legislation. These should cement in place or encourage broader transformations in the labour market in Japan.[27] They include, for instance [Nottage 2000d, paras JPN ¶60-003 ff]:

- 1998 amendments to the Labour Standards Law: allowing longer-term labour contracts; requiring written clarifications of work conditions upon hire, and reasons for termination (a growing source of tension);[28] and divorcing overtime payments from hours worked (indicating more stress on quality of work);
- 1997 amendments to the Equal Employment Opportunity Law [cf Hanami 1999b]: now prohibiting discrimination in recruitment, assignment, promotion, as well as in dismissal and retirement; compelling employers to mediation if requested by

25 "More Japanese Firms See Life Employment Unnecessary: Survey" Japan Economic Newswire, 14 November 2000.

27 This assumes of course that formal legal rules do matter in Japan. In her Ph.D thesis submitted to the European University Institute, Konsta [2000: 2424] concludes to the contrary, focusing on labour law generally and working time regulation in particular. This runs contrary directly to the analyses of Foote in this and other areas of labour law [1996, 1997], and for instance in traffic accident dispute resolution [Foote 1995]. It is also contrary to sociologically informed studies of product liability [Nottage & Wada 1998, Nottage 2000a, Nottage 2000c], contracting [Nottage 1997a, 1997b, 1998b], and commercial arbitration [Nottage 2000b]. Even the mainstream media, such as Time Magazine in its special issue of 25 September 2000 [Nottage 2000c], appears to have abandoned the strongly "culturalist" explanation of Japanese law which guides Konsta's thesis.

28 Since coming into effect in October 1998, a scheme involving informal and formal conciliation by Ministry of Labour officials in individual employment disputes has been used increasingly, with dismissals being the major category of dispute. These processes rely on voluntary settlement brokered by government officials, but labour interests now propose that Labor Relations Commissions be allowed to rule on the full range of individual labour disputes; see "The Dispute Resolution Support System" 39/10 Japan Labor Bulletin (2000) <http://www.jil.go.jp/bulletin/year/2000/vol39-10/05.htm>, and generally Nottage 2000d, para JPN ¶60-011. Meanwhile, amendments to Japan's unemployment benefit scheme (in effect from April 2001) have reduced payouts to those in their early 60s, and increased those to younger workers who suffer involuntary employment: see "Revision of the Employment Insurance Law" 39/7 Japan Labor Bulletin (2000) <http://www.jil.go.jp/bulletin/year/2000/vol39-07/05.htm>

employees; and addressing problems of sexual harassment (still a frequent source of litigation, since the early 1990s);[29]

- 1995 amendments (in effect from April 1999) to the Child Care Law: extending leave to provide care to elderly family members;[30]
- 1999 amendments to the Working Dispatching Law: abolishing the "positive list" system of limiting dispatching to specified (professional) job categories, in favour of a "negative list" system; and putting pressure on companies using such temporary helpers to offer them employment first if the company decide to hire for work done by them (potentially creating a new hybrid category of employees);
- Simultaneous amendments to the Employment Security Law: also changing to a "negative list" system for private placement of non-temporary workers; clearer licensing for businesses doing this; and replacement of a blanket fee maximum chargeable (which hampered attempts to head-hunt and place managers);[31]
- 1999 enactment of a Fundamental Law for a Gender-Equal Society (which may encourage affirmative action programmes, etc);[32]
- moves to promote pension plans based on "defined contributions" pension, rather

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[29] Indeed, the first case of sexual harassment by a male: "Fukuoka Man Settles Sexual Harassment Case with Male Boss" Kyodo News Service, 15 January 2001. More generally on the responses to heightened awareness of this issue due to litigation and legislative amendments, "Sexual Harassment: Actual Inquiries and the Responses of Companies" 39/7 Japan Labor Bulletin (2000) <http://www.jil.go.jp/bulletin/year/2000/vol39-07/02.htm#1>; Nottage 2000d, para JPN ¶60-004. See also warnings published by the Ministry of Labour in June 2000: "'Matters for Special Attention' in Hiring Employees by Status" 39/9 Japan Labor Bulletin (2000) <http://www.jil.go.jp/bulletin/year/2000/vol39-09/05.htm#1>

[30] Further amendments, to be submitted to the Diet in 2001 to take effect from April 2002, will extend the availability of flex-time work schedules, shorter working hours or exemptions from overtime work, to care for children until they turn three (rather than one): "Work and Family" Mainichi Daily News, 29 December 2000.

[31] See generally [Araki 1999]. Further: "According to the Ministry of Labour, from December 1, 1999 (when the laws came into effect) to June 1, 2000, 293 enterprises offered fee-charging job placement services (an increase of 34% compared to the same period in the previous year) and 898 enterprises were dispatching employees to other firms (an increase of 23%). As of June 1, 2000, the number of private fee-charging job placement businesses totalled 3,930, an increase of 8.1 percent from the end of November 1999, just before the relevant law was revised. ...The number of enterprises engaged in worker dispatching services as of June 1, 2000 totalled 17,277, an increase of 5.5 percent from the end of November 1999. ... According to the *Special Survey of the Labour Force Survey* conducted in February [2000] by the Management and Coordination Agency, only 2.8 percent of unemployed people rely on private job placement agencies when looking for work. That compares with 40.1 percent who rely on Public Employment Security Offices. On the other hand, some 900,000 workers were dispatched in fiscal 1998, 4.7 percent more than the previous year. Thus, although the private sector still plays a minor role in the market, as employment patterns become more varied in the future, rapid expansion of private job placement firms is expected. Moreover, since workers can now be dispatched to any category of job, it is almost certain that their numbers and significance will increase in the near future." See "Participation in Private Employment Placement Services Increases" 39/10 Japan Labor Bulletin (September 2000) <http://www.jil.go.jp/bulletin/year/2000/vol39-09/02.htm#1>. See also "2000 Economic Survey of Japan: A New Era Begins" 39/10 Japan Labor Bulletin (2000) <http://www.jil.go.jp/bulletin/year/2000/vol39-10/01.htm>.

[32] Nottage 2000d, para JPN ¶60-034. Cf generally "Fundamental Law for a Gender-Equal Society" 38/9 Japan Labor Bulletin (1999) <http://www.jil.go.jp/bulletin/year/1999/vol38-09/05.htm#1>; "White Paper on Gender Inequality" 39/8 Japan Labor Bulletin (2000) <http://www.jil.go.jp/bulletin/year/2000/vol39-08/01.htm>.

than just "defined benefits" (which had discouraged voluntary job-switching, because complete vesting was unusual).[33]

In addition to recent changes in the legal environment, and long-standing transformations in political economy broadly related to globalisation described at the start of this Part, globalisation is also beginning to have a more direct effect on the Japanese labour market. In the boom times of the 1980s, many "guest workers" were brought in for blue-collar work which Japanese were unwilling to touch. Many have stayed on, often illegally. Yet a significant feature of the 1990s has been a slowly growing presence of white-collar employees and managers, even at the highest executive level. This is most noticeable in the financial sector, but it is tied to broader patterns in foreign direct investment, especially Mergers and Acquisitions involving companies from abroad [see eg Bonacker 1999, Sibbett 1998]. While it is too early to say what independent effect these developments will have on the labour market in Japan, cumulatively they reinforce the changes described above, impacting on the future of corporate governance in Japan.[34]

V. Conflicting Tendencies in Industrial Production and the State?

Thus, applying basic principal-agent theory to analyse three key aspects of Japanese corporate governance suggests that the interests of managers and shareholder have drawn closer together; that severe challenges have emerged for corporate finance centred on main banks; but pressures reshaping employment relations may be less obvious and consolidate only over the longer term. Overall, this amounts to more convergence towards arm's length relations characteristic of Anglo-American corporate governance. Further complicating the picture, however, the notion of opportunism underlying principal-agent theory may not be the only force at work. This become apparent when we look at further stakeholders in the firm.

Another important set of stakeholders, affecting the relations among the others described so far, consists of the firm's outside suppliers and customers. Particularly intriguing are the cooperative relations which have developed among firms, especially in the automobile industry, notably in post-War Japan but later finding root in the US. Recent studies of industrial organisation have focused on "learning by monitoring" in this industry (and some others), involving: (i) benchmarking (exacting surveys of current and likely future products and processes) to uncover new general, (ii) simultaneous engineering (where subunits responsible for components undertakes similar benchmarking, while considering implications for other subunits, which may

[33] "Cabinet OKs Bill for New Defined-Benefit Pension Plans" Japan Economic Newswire, 19 February 2001. Although these proposed reforms only address hybrid schemes, even the largest Japanese companies have already begun voluntarily recrafting their pension schemes to allow more transportability. In 1999, for instance, Matsushita Electric Industrial Co allowed the option of taking "retirement benefits in twice-yearly increments while still on the job, rather than in a lump sum at retirement. ... More than 40% of new hires have chosen the incremental payments, four times the number Matsushita expected": "Individualism Is the Movement of the Moment in Japan: Consensus? What Consensus? People Begin to Look to Themselves: 'Be Anglo-Saxon and Succeed'", Asian Wall Street Journal, 8-14 January 2001, 6.

[34] By the end of 1998, despite the recession, registered foreign workers had grown a further two percent to reach a record high: "Registered Foreigners Exceed 1.5 Million" 38/9 Japan Labor Bulletin (1999) (<http://www.jil.go.jp/bulletin/year/1999/vol38-09/02.htm>. See also [Clark 2000].

lead to redefining the project as a whole), and (iii) systems of strict error detection and correction for the new routines, with further extensive information sharing to respond quickly before consequences become disastrous [Helper, McDuffie & Sabel 2000: 466]. The emergence of this paradigm suggests that pervasive patterns of information sharing may entrench norms of cooperation, seen not just as a means of securing individual benefits but rather as an end in itself, underpinned by a vision of "enlarging the pie" rather than trying to obtain a larger slice at the others' expense. History also shows how dramatic changes in conditions may unravel such collaborative relations (as in the US automobile industry over the 1950s-70s), but then build them up again as underlying mechanisms become apparent (as in the 1980s-90s) [ibid: 476-7].

Little data is available on what has happened to relations among firms in Japan's automobile industry, especially in the late 1990s [cf Miwa & Ramseyer 2000], when the changes to other aspects of corporate governance described above appeared to find more traction. Despite some notable developments,[35] the economic and social logic underpinning cooperative inter-firm relations may prove resistant in this industry. It is demonstrably more successful, and still holds reserves to draw on, compared for instance to Japan's weak financial sector. Further, Kashiwagi [2001: 3.b.v] reports that although Japan's auto manufacturers are now using e-commerce to unwind *keiretsu* or preferential relationships with suppliers for standardised products, they are retaining such relationships for more technologically complex parts. Relative stasis in such an important production chain would present a tension with the trends towards change identified above (Parts II-IV), even if the latter relations (within the firm) are more constitutive of corporate governance. But a similar tension arguably characterised the US over the 1980s and 1990s, as contracting among firms (at least in some manufacturing and services sectors) became more based on information sharing and learning by monitoring, yet arm's length control and market-based coordination increasingly characterised corporate governance in its narrower sense [Sabel 1995; 1996 = 1998].

The (re-)entrenchment of learning by monitoring mechanisms in the US at the level of industrial production, and their possible resilience in Japan,[35a] may encourage the emergence of novel forms of corporate governance in both countries: "corporate incubators" for strategic thinking established within firms, performance metrics based on baskets of measures subjected to continuous review and redefinition, and venture capitalists. However, these applications are less well established than in industrial production, and are thought to run more risk of being displaced by more straightforward market-based corporate governance mechanisms [Helper et al 2000: 477-501].

On the other hand, they may also be supported by similar processes of learning by monitoring being played out at the level of the state, a further broader stakeholder in corporate organisations. An important parallel trend in advanced industrialised democracies appears to be "democratic experimentalism" [Dorf & Sabel

[35] Japanese automobile makers contracted with 1245 companies in 1994, compared to 298 in 1987; and bought US$15.5 billion of parts from the US in 1993, six times more than in 1986 [Boyd & Schipani 2000: 857]. See also [JETRO 1996; Ishida 1997]; and broader restructuring in the wake of Renault's investment in Nissan (above n. 15 and 17). More generally, parts are increasingly procured from operations around the world, and almost all Japanese automobile manufacturers have seen significant foreign investment since 1996: see <http://www.meti.go.jp/english/information/data/cAuto00122e.pdf>.

[35a] For an interesting experiment in a different sector, see "IBM Japan Knits Parts Suppliers Into Chain: On-Site Storage of Modules Cuts Response Time, Costs", Nikkei Weekly, 12 February 2001, 10.

1998], involving: (a) central authorities which "create a framework for experimentation by defining broad problems, setting provisional standards, pooling measurements of local performance, aiding poor performers to correct their problems, and revising standards and overall goals according to results"; and (b) "local units doing most of the problem-solving but which are "accountable to the center, and to their local constituents, who participate in formulating its plans, and judge it both against those goals and in comparison to the performance to the performance of other locales in like circumstances" [Sabel 2000: 17; see also Gerstenberg & Sabel 2000]. Key parameters in experimentation involving the state are again transparency and participation by diverse affected actors, to prompt access to - and effective use of - information to develop collaborative and effective relations.

Important trends in this direction in Japan nowadays include sweeping deregulation programmes, although these have tended to get bogged down in detail and bureaucracy [Kawamura 1999]; enactment of comprehensive official information disclosure legislation in 1999 [Kadomatsu 1999]; more engagement with foreigners and foreign models, although still too reactive and lacking in vision [Clark 2000]; some legal recognition of previously marginalised ethnic groups [Levin 2001]; and adroit attempts by other minorities to avoid 'bureaucratic capture' while improving their lot [Nakamura 2001]. To be sure, steps have been more faltering than in some neighbouring countries, like Korea [Ginsburg 2001a]. Yet significant momentum has been generated in Japan over the last decade, pointing the way towards more sustained polyarchic "deliberative democracy" there too [cf generally Cohen & Sabel 1997]. This adds further contingencies and difficulties in assessing existing and potential changes in Japanese corporate governance. But these more political dimensions may prove to be the most crucial, despite having been overlooked by most commentators in the debate so far.[36] The seeming paralysis of Japanese policy-makers over the last decade, despite the welter of woeful economic news described in the opening quote in this paper, can then be seen in a more positive light. Perhaps it

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36 Recently, however, Fort & Schipani [2000: 865] has advocated various corporate governance mechanisms based rather similarly on the firm as "mediating institution", premised on empowerment and "participants within the organization [having] the requisite voice and power to have economic and non-economic concerns expressed and integrated into their business communities".

Further, Ballon and Honda [2000: xviii (original emphasis)] argue that "the challenge of business lies in fostering the *capacity to learn* and the *willingness to learn*, namely, to learn from other stakeholders about the vagaries of the market, of technology, of administration, and so on, and to learn how to overcome the steady obsolescence of skills and physical assets". But their later discussion of the "national context", especially of allegedly pervasive "government paternalism" [ibid: 74-9], follows conventional wisdom in depicting a system that generates considerable information, but through more hierarchical methods involving considerable exclusion of potential participants.

Finally, Roe [eg 1997] has long argued in general terms for the importance of path dependency in the national evolution (or otherwise) of corporate governance regimes, and has recently applied these insights to analyse lifelong employment in Japan [Gilson and Roe 1999]. However, although the starting point is political contingency (like the deal reached between managers and/or politicians and a segment of the labour force soon after World War II in Japan), the system is then reproduced and perhaps (but often not) changed following cost-benefit assessments by actors in the circumstances. Mahoney [2000: 517] identifies this sort of approach as a "utilitarian" variant of path dependence theory, but points out a number of others. Sabel's approach, and hence that presented in Part V of this paper, implies elements also of a "legitimation" variant of path dependency, whereby the "institution is reproduced because actors believe it is morally just or appropriate", and is then transformed due to "changes in the values or subjective beliefs of actors".

shows important elements of "democratic experimentalism", with (a) central authorities slowly reorganising key building blocks after extensive analysis of world-wide trends, but (b) leaving it primarily to social-economic sub-units (such as major stakeholders in firms including creditors and employees, with their peak assocations) to find a new balance and forms of governance combining efficiency with normative acceptability [cf eg West 2001b: 31-4, 62]. However, that more positive assessment turns crucially on whether the Japanese state is and will remain committed to fostering information flows and decentralised participation in decision-making among diverse socio-economic groups.

V. Conclusions

Overall, the combination of globalisation, deregulation, and recession in Japan throughout the 1990s has generated more systematic change than predicted or implied by many proponents of "varieties of capitalism" (cf Part I). To monitor relations in central areas of corporate governance straddling key factors of production in contemporary economies, such as employees and suppliers of equity or debt capital, there have been important shifts towards more arm's length or shareholder-based control-oriented strategies. These have occurred primarily in practices and expectations, but also (perhaps increasingly) in legislative rules.[37] Yet the transformations are most pronounced in the stakeholder relationships among managers and employees (Part II), and perhaps creditors (Part III), and less obvious - but still significant - in labour markets (Part IV). Further, a rather different set of norms

37 Focusing on social norms, Milhaupt [2001: 31] concludes that there are major transformations underway in business and government which are pushing Japan towards a shareholder-centred ideology:

> "increased acceptance of the takeover as a legitimate tool of corporate strategy and monitoring (and a concomitant reduction of legal and structural impediments to M&A), a heightened awareness of shareholders' economic expectations, a change in managerial mindset about is proper role in running the firm, diminished social expectations of forbearance on the part of banks and their regulators, and rising ambivalence about the benefits of seniority-based employment practices. These shifts are palpable and important Indeed, taken together with the emerging evidence of parallel norm shifts underway in Europe, they portend for the future a much narrower ideological spectrum on how and for whose benefits firms should be managed."

However, he continues that:

> "the rapidity and extent of Japanese normative convergence towards the Anglo-American model should not be overstated. While signs of norm shifts are very recent, evidence of the inefficiency of the old norm structure surfaced nearly a decade ago. And signs of norm stickiness are abundant."

Milhaupt [ibid: 32] also observes that changes in corporate law appear to have lagged behind significant changes in norms, such as new board structures. Yet he notes that such changes have recently been tabled. Viewing corporate governance more broadly, moreover, the legislative changes affecting labour relations (discussed in Part V of this paper) have come remarkably quickly. Even when focusing on the development of corporate law rules, West [2000b] may be overstating "divergence" in post-War Japan and the US by focusing on (declining) numbers of "functionally similar" common rules. Although he does attempt to break down this quantitative analysis by dividing them into mandatory versus enabling rules, a more qualitative judgement as to which of these rules are more important seems essential to judge overall divergence versus convergence. Also important is the starting point: the big shift (convergence) to more shareholder-oriented rules soon after World War II. Subsequent divergence from this new base-line may be decidedly less important in practical terms.

and arrangements may continue to characterise some important sectors of industrial production. Driven by information-sharing to develop and maintain trust, this may also reflect and support more participatory "democratic experimentalism" in the Japanese state (Part V). Such conflicting tendencies at different levels further undermine influential theories of "varieties of capitalism", which tend to see high degrees of internal consistency within such systems of economic and political ordering. They also raise doubts about the suggestion that "high trust" varieties (such as Germany's, but perhaps also Japan's) may disintegrate into "low-trust" or market-based varieties (arguably, the Anglo-American model), but not vice versa [Hall & Soskice 2000 = 2001]. Finally, because democratic experimentalism is common to the US and Britain as well, a deeper level of convergence appears to be emerging in Japan. But how various experiments play out in these countries, especially in reorienting Japanese corporate governance in its broadest sense, could well play out quite differently, leaving some important divergences.

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